# BILL ANALYSIS

C.S.S.B. 8
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Public Health
Committee Report (Substituted)

## BACKGROUND AND PURPOSE

The Texas Health Services Authority (THSA) is a 501(c)(3) nonprofit, public-private collaborative created to improve patient safety and quality of care by developing health information technology policies and infrastructure for the state health care system.

This legislation requires THSA to develop a statewide plan recommending improvements to the health care delivery system by ensuring health care providers have the tools they need to follow best practices. Specifically, THSA would develop and disseminate information about best practices and quality of care, develop recommendations to reduce administrative costs, study alternative payment methodologies that will reimburse health care providers based on quality rather than quantity, study payment incentives to increase access to primary care, and study payment incentives related to hospital and inpatient payments.

C.S.S.B. 8 relates to the administration, powers, and duties of THSA.

## RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## ANALYSIS

C.S.S.B. 8 amends the Health and Safety Code to add making recommendations to improve the quality of health care funded by both public and private payors and increasing accountability and transparency to the purposes of the Texas Health Services Authority (THSA). The bill adds to the purposes for which THSA is established the research, development, support, and promotion of recommended strategies, including strategies based on standards created by nationally recognized organizations, to improve the quality of health care in Texas and to increase accountability and transparency through voluntary implementation of the recommendations by health care practitioners, health care facilities, and payors, including recommendations for evidence-based best practice standards for health care facilities and health care practitioners; performance measures for health care practitioners; improved payment methodologies for payors; streamlined administrative processes; verification and authentication of the source data used in performance measures; and development and distribution of electronic applications for self-evaluations by health care practitioners.

C.S.S.B. 8 establishes that THSA is administratively attached to the Health and Human Services Commission (HHSC). The bill requires HHSC to provide administrative assistance, services, and materials to THSA; accept, deposit, and disburse money made available to THSA; accept gifts and grants, including applicable federal grants, on behalf of the corporation from any public or private entity; pay the salaries and benefits of the staff of THSA; reimburse expenses of the members of the board of directors of THSA incurred in the performance of official duties; apply for and receive on behalf of THSA any appropriations, gifts, or other money from the state or federal government or any other public or private entity, subject to limitations and conditions

prescribed by legislative appropriation; and provide THSA with adequate computer equipment and support and adequate office space. The bill clarifies that if the board hires a chief executive officer under applicable state law, the chief executive officer and any staff hired under that law are employees of THSA and not of HHSC. The bill makes provisions relating to political activities by certain public entities and individuals applicable to THSA and, for that purpose, clarifies that THSA is considered to be a state agency and that each THSA employee is considered to be a state employee.

C.S.S.B. 8 increases from 11 to 15 the number of members serving on the THSA board of directors and clarifies that an equal number of those members are appointed by the governor, by the governor from a list of candidates prepared by the speaker of the house of representatives, and by the lieutenant governor, rather than all members being appointed by the governor with the advice and consent of the senate. The bill makes related conforming changes. The bill removes the requirement that the governor also appoint at least two ex officio, nonvoting members representing the Department of State Health Services (DSHS). The bill expands the number of ex officio, nonvoting members to include the commissioner of DSHS, rather than at least two individuals representing DSHS, the executive commissioner of HHSC, the commissioner of insurance, the executive directors of the Employees Retirement System of Texas and the Teachers Retirement System of Texas, and the state Medicaid director of HHSC.

C.S.S.B. 8 clarifies that the board shall meet at least once each calendar quarter, rather than at least twice a year. The bill establishes that board meetings are open to the public and requires the board to provide notice of the meetings in accordance with open meetings provisions. The bill authorizes the board to employ or contract with a medical advisor who must be a physician licensed to practice medicine in Texas; has provided direct medical care to patients during the physician's career; and has expertise in health care quality improvement and health care performance measures. The bill authorizes the chief executive officer to employ a technology director who must have education, training, and experience in planning, developing, and implementing health information exchange initiatives. The bill clarifies that the medical advisor, technology director, and additional staff hired are state employees for all purposes, including accrual or leave time, insurance benefits, retirement benefits, and travel regulations.

C.S.S.B. 8 requires the board to establish an advisory committee on technology and an advisory committee on evidence-based best practices and quality of care, and authorizes the board to establish additional advisory committees the board considers necessary to assist the board in performing its functions. The bill establishes criteria for appointments to an advisory committee. The bill sets out provisions relating to the compensation and reimbursement of advisory committee members; exempts the size, composition, or duration of the advisory committees from provisions regarding state agency advisory committees; and makes meetings of the advisory committees subject to open meetings provisions.

C.S.S.B. 8 adds to the general powers and duties of THSA the authority to establish statewide health information exchange capabilities for enabling patients to access their own medical records through the Internet. The bill removes from the general powers and duties of THSA the authority to identify standards for streamlining health care administrative functions across payors and providers, including electronic patient registration, communication of enrollment in health plans, and information at the point of care regarding services covered by health plans.

C.S.S.B. 8 sets out duties of THSA relating to the research, development, support, and promotion of certain best practice standards; performance measures to evaluate quality of care; standards for information collection; strategies for use of existing resources and to facilitate the exchange of health care information; recommendations to encourage clinical integration and collaboration; alternative payment methodologies; recommendations and standards for streamlining health care administrative functions; and standards for verification and authentication of source data used in performance measures. The bill sets out requirements for the board in relation to the performance of those duties.

C.S.S.B. 8 requires the board to develop recommendations on achieving maximum participation of health care practitioners, health care facilities, and payors in using the standards, guidelines, strategies, and methodologies developed under its provisions. The bill requires the board to develop recommendations for the use of electronic applications by a health care practitioner in self-evaluation of individual performance compared to the practitioner's peers.

C.S.S.B. 8 adds temporary provisions, set to expire September 1, 2011, requiring THSA to conduct a study or contract for a study to be conducted to develop payment incentives to increase access to primary care. The bill requires the study to evaluate proposals for changes to payment methodologies for implementation by multiple public and private payors. The bill requires the study, in evaluating the proposals, to consider the six aims of quality care identified by the Institute of Medicine and to consider payment methodologies that reward primary health care practitioners for patient retention; encourage those practitioners to spend an appropriate amount of time with each patient; reward those practitioners for monitoring patients, including reminders to obtain follow-up care; provide incentives for having 24-hour availability of such a practitioner in the practice and taking other action to reduce unnecessary emergency room visits; and improve access to primary care.

C.S.S.B. 8 requires THSA to conduct a study or contract for a study to be conducted to develop payment methodologies based on risk-adjusted episodes of care, including global payments, that create incentives for a higher quality of services and reduce unnecessary services. The bill requires the study to evaluate payment methodologies that align incentives for health care practitioners and health care facilities; bundle payments based on episodes of care or provide global payments to address variation in cost while providing incentives for higher-quality care; allow for the adjustment of payments based on the risk factors of the patient, including age, comorbidity, and severity; and may be adopted by private and public payors. The bill requires the study to identify high-cost, frequently performed procedures for which the cost would be most affected by a change in payment methodologies.

C.S.S.B. 8 sets out elements both studies are required to examine and review and issues about which both studies are required to include recommendations. The bill requires THSA to submit to the legislature, not later than January 1, 2011, a summary of the results of the studies and legislative recommendations regarding the studies' findings, including methods to require or encourage as many payors as possible to use the payment methodologies recommended by the studies.

C.S.S.B. 8 defines "clinical integration," "global payments," "health care facility," and "health care practitioner." The bill revises the definition of "payor" and removes the definition of "physician" from provisions regarding THSA.

C.S.S.B. 8 establishes that the term of a voting member of the board of THSA serving immediately before the effective date of the bill expires on that date. The bill requires the governor and lieutenant governor to appoint voting members of the board, under the provisions of the bill, as soon as possible after the effective date of the bill and clarifies that a person who is a voting member of the board immediately before the effective date of the bill may be reappointed to the board.

C.S.S.B. 8 repeals Section 182.102(a), Health and Safety Code, prohibiting THSA from collecting and analyzing clinical data; comparing physicians; creating a tool to measure physician performance by comparison; providing certain protected health information or certain access to certain protected health information to certain persons, entities, or information exchanges; or creating evidence-based standards for the practice of medicine.

**EFFECTIVE DATE**

September 1, 2009.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 8 differs from the original by adding references to specific national organizations the standards of which may be used as a basis for the recommended strategies to improve the quality of health care in Texas and increase accountability and transparency and for the evidence-based best practice standards for health care practitioners and health care facilities the Texas Health Services Authority (THSA) is required to research, develop, support, and promote.

C.S.S.B. 8 differs from the original by including references to the best practice standards and performance measures identified by the advisory committee on evidence-based best practices and quality of care in provisions relating to the purposes for which THSA is established. The substitute clarifies that the recommendations required to be made by THSA regarding improved payment methodologies are to be recommendations for methodologies to reward adoption of clinical best practices and improved outcomes, whereas the original requires recommendations on improved payment methodologies for payors. The substitute differs from the original by adding to the recommended strategies to be researched, developed, supported, and promoted by THSA recommendations for verification and authentication of the source data used in performance measures and development and distribution of electronic applications for use by a health care practitioner in self-evaluation of individual performance compared to the practitioner's peers.

C.S.S.B. 8 differs from the original by clarifying that the Health and Human Services Commission (HHSC) is required to seek gifts and grants on behalf of THSA from any public or private entity, in addition to accepting gifts and grants. The substitute adds a clarification not in the original that such grants include applicable federal grants. The substitute adds provisions not in the original making provisions relating to political activities by certain public entities and individuals applicable to THSA and, for that purpose, clarifying that THSA is considered to be a state agency and that each THSA employee is considered to be a state employee.

C.S.S.B. 8 differs from the original by authorizing, rather than requiring, the board to employ or contract with a medical advisor. The substitute differs from the original by adding additional qualifications for a medical advisor to require the advisor to be a physician who has provided direct medical care to patients during the physician's career and has expertise in health care quality improvement and health care performance measures. The substitute adds provisions not in the original relating to the hiring of a technology director and clarifying that the medical advisor and technology director are state employees. The substitute adds provisions not in the original authorizing THSA to establish capabilities for enabling patients to access their own medical records through the Internet.

C.S.S.B. 8 differs from the original by requiring THSA to research, develop, support, and promote strategies for use by the state to facilitate the exchange of health care information; the interoperability of different information storage and transmission systems, including the formation of statewide interoperability among local health information exchanges; and the standardization of health care information in the system, whereas the original does not include the requirement relating to the formation of statewide interoperability among local health information exchanges. The substitute differs from the original by adding a clarification that the alternative payment methodologies required to be researched, developed, supported, and promoted are to be methodologies that are developed recognizing the infrastructure and system investments needed to deliver primary care in a patient-centered medical home and to reward health care practitioners and health care facilities. The substitute differs from the original by specifying that those alternative payment methodologies are for improving efficiency, promoting a higher quality of patient care, and using evidence-based best practices, including aligning

incentives for health care practitioners and health care facilities and allowing for the adjustment of payment based on the risk factors of the patient, including age, comorbidity, and severity. The substitute adds a provision not in the original requiring THSA to research, develop, support, and promote standards for verification and authentication of source data used in performance measures.

C.S.S.B. 8 adds provisions not in the original requiring the THSA board, in performing its duties, to review all standards, guidelines, strategies, recommendations, and methodologies to ensure that they are safe, effective, timely, efficient, equitable, and patient-centered, considering the six aims of quality care identified by the Institute of Medicine. The substitute adds provisions not in the original requiring the board to develop recommendations for the use of electronic applications by a health care practitioner in self-evaluation of individual performance compared to the practitioner's peers. The bill adds a requirement not in the original that the study to develop payment incentives to increase access to primary care, in evaluating proposals for changes to such methodologies for implementation by public and private payors, consider the six aims of quality care identified by the Institute of Medicine. The substitute differs from the original by requiring that the payment methodologies studied be methodologies that allow for the adjustment of payments, rather than costs, based on the risk factors of the patient and clarifying that those risk factors include age, comorbidity, and severity. The substitute adds provisions not in the original requiring the studies to review all payment methodologies to ensure they are safe, effective, timely, efficient, equitable, and patient-centered, considering the six aims of quality care identified by the Institute of Medicine.

C.S.S.B. 8 differs from the original by omitting from the meaning of the term "global payments" a clarification that the amount of compensation paid to a health care practitioner or facility is based on a predetermined payment for each person for that period regardless of the specific services actually provided to persons in that period.